

UNCLASSIFIED

SECTION 7

PROJECT EQUIPMENT

7.1 For the purpose of carrying out a PA, each Participant may loan without charge to another Participant such Project Equipment identified in a PA as being necessary for the Project.

7.2 Project Equipment loaned will be used by the receiving Participant only for the purposes of the PA. Such Project Equipment will remain the property of the providing Participant.

7.3 The receiving Participant will maintain any such Project Equipment in good order, repair, and operable condition for the purpose stated in the PA. Unless the providing Participant has authorized the Project Equipment to be expended or otherwise consumed without reimbursement to the providing Participant, the receiving Participant will return the Project Equipment to the providing Participant in as good condition as received, normal wear and tear excepted, or return the Project Equipment and pay the cost to restore it. If the Project Equipment is damaged beyond economical repair, the receiving Participant will return the Project Equipment to the providing Participant (unless otherwise specified in writing by the providing Participant) and pay its replacement value as computed pursuant to the providing Participant's national laws, regulations, and procedures. If the Project Equipment is lost while in the custody of the receiving Participant, the receiving Participant will issue a certificate of loss to the providing Participant and pay the replacement value as computed pursuant to the providing Participant's national laws, regulations, and procedures. Alternatively, in respect of either situation described above, the receiving Participant, with the approval of the providing Participant, may determine to replace the damaged or lost Project Equipment. In no event will such cost exceed replacement cost less an amount determined to represent reasonable wear and tear.

7.4 Each PA will list the Project Equipment to be loaned, if any, and provide the specific details for the loan. Project Equipment identified at the time of PA signature will be set out in the PA as shown in Annex A. Project Equipment that cannot be identified at the time of PA signature will be documented in a list to be developed and maintained by the POs in accordance with the format in the PA. Approval for all loans will be in accordance with national procedures of the relevant Participants.

7.5 The providing Participant will furnish the Project Equipment in a serviceable and usable condition according to the purpose stated in the PA. However, the providing Participant makes no warranty or guarantee of fitness of the Project Equipment for a particular purpose or use, and makes no commitment to alter, improve, or adapt the Project Equipment or any part thereof.

UNCLASSIFIED

7.6 The providing Participant will transfer the Project Equipment for the approved loan period, unless extended by written mutual consent between the Participants concerned, provided that the duration may not exceed the effective period of the PA.

7.7 The providing Participant, at its expense, will deliver the Project Equipment to the receiving Participant at a location that is mutually determined. Possession of the Project Equipment will pass from the providing Participant to the receiving Participant at time of receipt. Any further transportation is the responsibility of the receiving Participant.

7.8 The providing Participant will furnish the receiving Participant such operations and maintenance information and training on the Project Equipment when mutually determined in a PA as is necessary to enable the Project Equipment to be used for the purpose stated in the PA.

7.9 The receiving Participant will inspect and inventory the Project Equipment upon receipt. The receiving Participant will also inspect and inventory the Project Equipment prior to its return (unless the Project Equipment is to be expended or consumed!).

7.10 Upon expiration or termination of the loan period specified in the PA (taking into account any mutually determined extension), the receiving Participant will return Project Equipment, at its expense, to the providing Participant at the location mutually determined. Any further transportation is the responsibility of the providing Participant. The receiving Participant(s) will provide written notice of consumption or expenditure of Project Equipment mutually determined for such consumption or expenditure. In the event the intended consumption or expenditure does not occur, the receiving Participant will return the Project Equipment, at its expense, to the providing Participant at a location that is mutually determined. Any further transportation is the responsibility of the providing Participant.

7.11 The Participants will ensure, by all reasonable means, the preservation of Intellectual Property Rights in Project Equipment.

7.12 Project Equipment that is jointly acquired is subject to the following provisions unless otherwise mutually determined by the Participants:

7.12.1 Any Project Equipment that is jointly acquired on behalf of two or more of the Participants will be the subject of a PA.

7.12.2 The Participants will in the same ratio as costs are shared in the PA under which it is jointly acquired have interests in jointly acquired Project Equipment.

7.12.3 Each Participant which has custody of jointly acquired Project Equipment will maintain such jointly acquired Project Equipment in good order, repair and operable condition, normal wear and tear excepted, unless the Participants have mutually

**UNCLASSIFIED**

determined that it be expended or otherwise consumed by that Participant in connection with the Project.

7.12.4 If jointly acquired Project Equipment is damaged or lost while in the custody of a Participant, the provisions of paragraph 7.3 apply.

7.12.5 Jointly acquired Project Equipment will be used for the purposes of carrying out this MOU and its PAs.

7.12.6 Any Project Equipment which is jointly acquired on behalf of all the Participants for use under a PA will be disposed of during the applicable Project or when the Project ends, as mutually determined by the SC.

7.12.7 Disposal of jointly acquired Project Equipment may include a transfer of the interest of the Participants in such Project Equipment to one Participant, or the sale of such Project Equipment to a third party in accordance with Section 12 (Third Party Sales and Transfers). The Participants will share the consideration from jointly acquired Project Equipment transferred or sold to a third party in the same ratio as costs are shared in the Project Equipment.

UNCLASSIFIED

SECTION 8

DISCLOSURE AND USE OF PROJECT INFORMATION

8.1 General: The Participants recognize that successful collaboration depends on full and prompt exchange of information necessary for carrying out this MOU and each PA. Information may be exchanged under this MOU to fulfill the objective and scope of this MOU and for the purpose of establishing a PA to carry out specific collaborative activity. The nature of the amount of Project Information to be acquired will be consistent with the objectives stated in Section 2 (Objectives), Section 3 (Scope of Work), Section 6 (Contracting Provisions) and the PAs to this MOU. Subject to the rights the Participants are accorded under this MOU, title to Project Foreground Information generated by a Participant or its Contractor will reside in that Participant or its Contractors, in accordance with that Participant's national laws, regulations and policies.

8.2 Government Project Foreground Information

8.2.1 Disclosure: Government Project Foreground Information generated under a PA by a Participant's military or civilian employees will be disclosed without charge to the other Participants.

8.2.2 Use: Each Participant may use all Government Project Foreground Information without charge for Defense Purposes. The Participant generating Government Project Foreground Information will also retain its rights of use thereto. Any sale or other transfer to a Third Party will be subject to the provisions of Section 12 (Third Party Sales and Transfers) of this MOU.

8.3 Government Project Background Information

8.3.1 Disclosure: Each Participant, upon request, will disclose to the other relevant Participants to a PA any relevant Government Project Background Information generated by its military or civilian employees provided that:

8.3.1.1 such Government Project Background Information is necessary to or useful in the Project, with the Participant in possession of the information determining whether it is "necessary to" or "useful in" the Project;

8.3.1.2 such Government Project Background Information may be made available without incurring liability to holders of proprietary rights; and

8.3.1.3 disclosure is consistent with national disclosure policies and regulations of the furnishing Participant.

UNCLASSIFIED

8.3.2 Use: Government Project Background Information disclosed by one Participant to the other Participants may be used and have used without charge by the other Participants for Project purposes only; however, the furnishing Participant will retain all its rights with respect to such Project Background Information.

**8.4 Contractor Project Foreground Information**

8.4.1 Disclosure: Contractor Project Foreground Information generated and delivered by Contractors to a Participant under a PA, will be disclosed without charge to the other relevant Participants.

8.4.2 Use: Each Participant may use without charge for its Defense Purposes all Contractor Project Foreground Information generated and delivered by Contractors of the other Participants. The Participant whose Contractors generate and deliver Contractor Project Foreground Information will also retain rights of use thereto in accordance with the applicable Contract(s). Any sale or other transfer to a Third Party of Contractor Project Foreground Information, will be subject to the provisions of Section 12 (Third Party Sales and Transfers) of this MOU.

**8.5 Contractor Project Background Information**

8.5.1 Disclosure: Any Contractor Project Background Information, (including information subject to proprietary rights) generated and delivered by contractors of a Participant, including Project Background Information delivered by Contractors under a PA to this MOU, will be made available to the other relevant Participants provided the following conditions are met:

8.5.1.1 such Contractor Project Background Information is necessary to or useful in the Project, with the Participant in possession of the information determining whether it is "necessary to" or "useful in" the Project;

8.5.1.2 such Contractor Project Background Information may be made available without incurring liability to holders of proprietary rights; and

8.5.1.3 disclosure is consistent with national disclosure policies and national regulations of the furnishing Participant.

8.5.2 Use: Contractor Project Background Information furnished by one Participant's contractors and disclosed to the other Participants may be used and have used without charge by the other Participants for Project purposes only, and may be subject to further restrictions by holders of proprietary rights; however, the furnishing Participant will retain all its rights with respect to such contractor Project Background Information.

**8.6 Alternative Uses of Project Information**

UNCLASSIFIED

- 8.6.1 Any Project Background Information provided by one Participant will be used by the other Participants only for the purposes set forth in this MOU, unless otherwise consented to in writing by the providing Participant.
- 8.6.2 The prior written consent of each PA Participant will be required for the use of Project Foreground Information for purposes other than those provided for in this MOU.
- 8.7 Project Information subject to Intellectual Property Rights.
- 8.7.1 All Project Information subject to Intellectual Property Rights will be identified, marked and, where unclassified, it will be handled as Controlled Unclassified Information and in accordance with any applicable arrangements between the Participants concerned.
- 8.8 Patents
- 8.8.1 Where a Participant owns title to a Project Invention; or has the right to receive title to a Project Invention, that Participant will consult with the other relevant PA Participants regarding the filing of a Patent application(s) in one or more countries for such Project Invention. The Participant which has or receives title to such Project Invention will, in any country, file, cause to be filed, or provide the other Participants with the opportunity to file on behalf of the Participant holding title, or its Contractors, as appropriate, Patent applications covering that Project Invention. If a Participant having filed or caused to be filed a Patent application decides to stop prosecution of the application or maintenance of the patent, that Participant will notify the other Participants to enable one or more of them to continue the prosecution or the maintenance.
- 8.8.2 Each relevant PA Participant will be furnished with copies of Patent applications filed and Patents granted with regard to Project Inventions.
- 8.8.3 Each such Participant will acquire a non-exclusive, irrevocable, royalty-free license to practice or have practiced, by or on behalf of the Participant, throughout the world for Defense Purposes, any Project Invention.
- 8.8.4 Patent applications to be filed under this MOU which contain Classified Information, will be protected and safeguarded in accordance with Section 11 (Security).
- 8.8.5 Each Participant will notify the other relevant Participants of any Patent infringement claims made in its territory arising in the course of work performed under any PA. Insofar as possible, the other Participants will provide information available to it that may assist in defending the claim. Each Participant will be responsible for handling all Patent infringement claims made in its territory, and will consult with the other Participants during the handling, and prior to any settlement, of such claims. The Participants to a PA will share the costs of resolving patent infringement claims in the

**UNCLASSIFIED**

same percentage as they share the full Financial Costs and Non-Financial Costs of the Project or consent to alternative arrangements. The Participants will, in accordance with their national laws and practices, give their authorization and consent for all use and manufacture in the course of work performed under the Project of any invention covered by a Patent issued by their respective countries.

UNCLASSIFIED

SECTION 9

CONTROLLED UNCLASSIFIED INFORMATION

9.1 Except as otherwise provided in this MOU or as authorized in writing by the originating Participant, Controlled Unclassified Information provided or generated pursuant to this MOU will be controlled as follows:

9.1.1 Such information will be used only for the purposes authorized for use of Project Information as specified in Section 8 (Disclosure and Use of Project Information).

9.1.2 Access to such information will be limited to personnel whose access is necessary for the permitted use under paragraph 9.1.1, and will be subject to the provisions of Section 12 (Third Party Sales and Transfers).

9.1.3 Each Participant will take all lawful steps available to it under applicable law, which may include national classification, to keep such information free from further disclosure (including requests under any legislative provisions), except as provided in paragraph 9.1.2, unless the originating Participant consents to such disclosure. In the event of unauthorized disclosure, or if it becomes probable that the information may have to be further disclosed under any legislative provision, immediate notification will be given to the originating Participant.

9.2 To assist in providing the appropriate controls, the originating Participant will ensure that Controlled Unclassified Information is appropriately marked. The Participants will decide, in advance and in writing, on the markings to be placed on the Controlled Unclassified Information. The appropriate markings will be defined in the PSI.

9.3 Controlled Unclassified Information provided or generated pursuant to a PA to this MOU will be handled in a manner that ensures control as provided for in paragraph 9.1.

9.4 Prior to authorizing the release of Controlled Unclassified Information to Contractors, the Participants will ensure the Contractors are legally bound to control such information in accordance with the provisions of this Section.

UNCLASSIFIED

SECTION 10

VISITS TO ESTABLISHMENTS

- 10.1 Each Participant will permit visits to its government establishments, agencies, and laboratories, and Contractor industrial facilities by employees of the other Participants or by employees of the other Participants' Contractor(s), provided that the visit is authorized by the sending and receiving Participants and the employees have any necessary and appropriate security clearances and a need-to-know.
- 10.2 All visiting personnel will be required to comply with security regulations of the host Participant. Any information disclosed or made available to visitors will be treated as if supplied to the Participant sponsoring the visiting personnel, and will be subject to the provisions of this MOU.
- 10.3 Requests for visits by personnel of one Participant to a facility of another Participant will be coordinated through official channels, and will conform with the established visit procedures of the host country. Requests for visits will bear the name of this MOU and the name of the applicable PA.
- 10.4 Lists of personnel of each Participant required to visit, on a continuing basis, facilities of the other Participants will be submitted through official channels in accordance with recurring international visit procedures.

**UNCLASSIFIED**

**SECTION 11**

**SECURITY**

- 11.1 All Classified Information provided or generated pursuant to this MOU and its PAs will be stored, handled, transmitted, and safeguarded in accordance with applicable bilateral agreements or arrangements between the Participants concerned and with the Participants' national security laws and regulations.
- 11.2 Classified Information will be transferred only through official government-to-government channels or through channels approved by the Designated Security Authorities (DSAs) of the Participants. Such Classified Information will bear the level of classification, denote the country of origin, the provisions of release, and the fact that the information relates to this MOU and the applicable PA.
- 11.3 Each Participant will take all lawful steps available to it under applicable law to ensure that Classified Information provided or generated pursuant to this MOU and any of its PAs is protected from further disclosure, except as permitted by paragraph 11.8, unless the other Participants consent to such disclosure. Accordingly, each Participant will ensure that:
- 11.3.1 The recipient will not release the Classified Information to any government, national, organization, or other entity of a Third Party without the prior written consent of the originating Participant in accordance with the procedures set forth in Section 12 (Third Party Sales and Transfers);
- 11.3.2 The recipient will not use the Classified Information for other than the purposes provided for in this MOU; and
- 11.3.3 The recipient will comply with any distribution and access restrictions on information that is provided under this MOU.
- 11.4 The Participants will investigate all cases in which it is known or where there are grounds for suspecting that Classified Information provided or generated pursuant to this MOU and any of its PAs has been lost or disclosed to unauthorized persons. Each Participant also will promptly and fully inform the other Participants of the details of any such occurrences, and of the final results of the investigation and of the corrective action taken to preclude recurrences.
- 11.5 When a PA contains provisions for the exchange of Classified Information, the POs will prepare a PSI and a CG for the Project. The PSI and the CG will describe the methods by which Project Information and material will be classified, marked, used, transmitted, and safeguarded. The PSI and CG will be developed by the POs within three months after a PA enters into effect. They will be reviewed and forwarded through

UNCLASSIFIED

the SC to the Participant's DSAs for approval and will be applicable to all government and Contractor personnel participating in the Project. The CG will be subject to regular review and revision with the aim of downgrading the classification whenever this is appropriate. The PSI and the CG will be approved by the appropriate DSA prior to the transfer of any Classified Information or Controlled Unclassified Information.

11.6 The DSA of a Participant in which a classified Contract is awarded will assume responsibility for administering within its territory security measures for the protection of the Classified Information, in accordance with its laws and regulations. Prior to the release to a Contractor (interpreted as a Contractor of any level) or prospective Contractor of any Classified Information received under this MOU or its PAs, the DSAs will:

- 11.6.1 Ensure that such Contractor (interpreted as a Contractor of any level) or prospective Contractor and their facilities have the capability to protect the Classified Information adequately;
- 11.6.2 Grant a security clearance to the facility(ies), if appropriate;
- 11.6.3 Grant a security clearance for all personnel whose duties require access to Classified Information, if appropriate;
- 11.6.4 Ensure that all persons having access to Classified Information are informed of their responsibilities to protect the Classified Information in accordance with national security laws and regulations, and the provisions of this MOU;
- 11.6.5 Carry out periodic security inspections of cleared facilities to ensure that the Classified Information is properly protected and;
- 11.6.6 Ensure that access to the Classified Information is limited to those persons who have a need-to-know for purposes of the MOU.

11.7 Contractors (interpreted as a Contractor of any level) or prospective Contractors, which are determined by DSAs to be under financial, administrative, policy or management control of nationals or entities of a Third Party, may participate in a Contract or subcontract requiring access to Classified Information provided or generated pursuant to this MOU and any of its PAs only when legally enforceable measures are in effect to ensure that nationals or other entities of a Third Party will not have access to Classified Information. If legally enforceable measures are not in effect to preclude access by nationals or other entities of a Third Party, the other Participants will be consulted for approval prior to permitting such access.

11.8 For any facility wherein Classified Information or Controlled Unclassified Information is to be used, the responsible Participant or Contractor will approve the appointment of a person or persons to exercise effectively the responsibilities for safeguarding at such facility the information or material pertaining to this MOU and any

**UNCLASSIFIED**

of its PAs. These officials will be responsible for limiting access to Classified Information involved in this MOU and any of its PAs to those persons who have been properly approved for access and have a need-to-know.

11.9 Each Participant will ensure that access to the Classified Information is limited to those persons who possess requisite security clearances and have a specific need for access to the Classified Information in order to participate in the Project(s).

11.10 Information provided or generated pursuant to this MOU and any of its PAs may be classified as high as Secret. The existence of this MOU is Unclassified and the contents are Unclassified. The classification of a specific PA and its content will be stated in the PA.

UNCLASSIFIED

SECTION 12

THIRD PARTY SALES AND TRANSFERS

- 12.1 Except to the extent permitted in paragraph 12.2, a Participant will not sell, transfer title to, disclose, or transfer possession of Project Foreground Information to any Third Party without the prior written consent of the other Participants. Furthermore, no Participant will permit any such sale, disclosure, or transfer, including by the owner, without the prior written consent of the other Participants. Such consent will not be given unless the government of the intended recipient consents in writing with the Participants that it will:
- 12.1.1 Not retransfer, or permit the further retransfer of, any equipment or information provided; and
- 12.1.2 Use, or permit the use of, the equipment or information provided only for the purposes specified by the Participants.
- 12.2 Each Participant will retain the right to sell, transfer title to, disclose, or transfer possession of Project Foreground Information which:
- 12.2.1 is generated solely by either that Participant or that Participant's Contractors in the performance of that Participant's work allocation under Section 3 (Scope of Work) or a PA; and
- 12.2.2 does not include any Project Foreground Information or Project Background Information of another Participant, and whose generation, test or evaluation has not relied on the use of Project Equipment of another Participant.
- 12.3 In the event questions arise as to whether the Project Foreground Information (or any item produced either wholly or in part from the Project Foreground Information) that a Participant intends to sell, transfer title to, disclose, or transfer possession of, to a Third Party is within the scope of paragraph 12.2, the matter will be brought to the immediate attention of the other Participants. The Participants will resolve the matter prior to any sale or other transfer of such Project Foreground Information (or any item produced wholly or in part from such Project Foreground Information) to a Third Party.
- 12.4 Sales and other transfers to third parties of equipment developed jointly under this MOU may attract a levy to be shared among the Participants. Prior to any such sale or transfer, the amounts of any levy and the procedures for assessing and distributing such levy will be mutually determined by the Participants, consistent with the laws and regulations of each Participant, in accordance with the PA. A Participant may reduce or waive its share of the levy.

**UNCLASSIFIED**

12.5. A Participant will not sell, transfer title to, disclose, or transfer possession of Project Equipment or Project Background Information provided by another Participant to any Third Party without the prior written consent of the Participant which provided such equipment or information. The providing Participant will be solely responsible for authorizing such transfers and, as applicable, specifying the method and provisions for implementing such transfers.

UNCLASSIFIED

SECTION 13

LIABILITY AND CLAIMS

- 13.1 Claims will be dealt with in accordance with any applicable international arrangements between the Participants concerned.
- 13.2 Where no applicable international arrangements exist between the Participants concerned:
- 13.2.1 With the exception of claims for loss or damage to Project Equipment pursuant to paragraph 7.3, each Participant waives all claims against the other Participants for injury or death to its personnel and for damage to its property arising from the performance of official duties..
- 13.2.2 In the event of claims from third parties for injury or death to persons or damage to property arising from the performance of official duties, the Participants will share, in accordance with the cost sharing percentages stated in the applicable PA, or if no applicable PA, equally between the Participants concerned, any costs including those adjudicated by a court or administrative body or other entity of competent jurisdiction.. If the Participants mutually determine, however, that such damage results from reckless acts or reckless omissions, wilful misconduct or gross negligence of a Participant, its personnel or agents, the costs of any liability will be borne by that Participant alone.
- 13.3 Claims arising under or related to any Contract awarded pursuant to Section 6 (Contracting Provisions) will be resolved in accordance with the provisions of the Contract. The Participants will not indemnify Contractors against third party liability claims.
- 13.4 In the case of damage caused to or by jointly acquired Project Equipment of the Participants, where the cost of making good such damage is not recoverable from other persons, such cost will be borne by the Participants in accordance with the cost sharing provisions of the PA.

UNCLASSIFIED

SECTION 14

PARTICIPATION OF ADDITIONAL NATIONS

- 14.1 It is recognized that other national defense organizations may wish to join the MOU.
- 14.2 Mutual consent of the Participants will be required to conduct discussions with potential additional Participants. The Participants will discuss the arrangements under which another Participant might join, including the furnishing of releasable Project Information for evaluation prior to joining. If the disclosure of Project Information is necessary to conduct discussions, such disclosure will be in accordance with Section 8 (Disclosure and Use of Project Information), Section 9 (Controlled Unclassified Information), Section 11 (Security) and Section 12 (Third Party Sales and Transfers).
- 14.3 The Participants will jointly formulate the provisions under which additional Participants might join. The addition of new Participants to the MOU and a PA Project will require amendment of this MOU and the relevant PA by the appropriate Participants.

UNCLASSIFIED

SECTION 15

CUSTOMS DUTIES, TAXES AND SIMILAR CHARGES

15.1 Customs duties, import and export taxes and similar charges will be administered in accordance with each Participant's respective laws and regulations. Insofar as existing national laws and regulations permit, the Participants will endeavor to ensure that such readily identifiable duties, taxes and similar charges, as well as quantitative or other restrictions on imports and exports, are not imposed in connection with work carried out under each PA.

15.2 Each Participant will use its best efforts to ensure that customs duties, import and export taxes, and similar charges are administered in a manner favorable to the efficient and economical conduct of the work. If any such duties, taxes, or similar charges are levied, the Participant in whose country they are levied will bear such costs.

**UNCLASSIFIED**

**SECTION 16**

**GENERAL PROVISIONS**

- 16.1 Disputes between the Participants arising under or relating to this MOU or its PAs will be resolved only by consultation between the Participants and will not be referred to a national court, an international tribunal, or to any other person or entity for settlement.
- 16.2 The working language for the Projects under this MOU will be the English language. All data and information generated under this MOU, its PAs, and its implementing Contracts and provided by one Participant to the other Participants will be furnished in the English language.
- 16.3 All activities of the Participants under this MOU and its PAs will be carried out in accordance with their national laws. The responsibilities of the Participants will be subject to the availability of funds for such purposes.